

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF:) Case No.
ASHTON MARINE CORPORATION, for)
Exoneration from or Limitation of Liability,) In Admiralty
Plaintiff-Petitioner.)
)
)
)

COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY

COMES NOW Plaintiff Ashton Marine Corporation (“Ashton”), by and through its undersigned attorneys, and for its Complaint for Exoneration or Limitation of Liability, respectfully states as follows:

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333, in that this is a civil suit arising under the Court's admiralty and maritime jurisdiction brought pursuant to the Vessel Owners Limitation of Liability Act 46 U.S.C. § 30501 et seq., and Rule F of the Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure. This is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. The M/V CANDACE ELISE has been regularly operated by Ashton on Lake Michigan within the geographical boundaries of this District, and that vessel was within the jurisdiction of this Court at the time this action was filed.

3. Venue is proper in this Court under Rule F(9) of the Supplemental Rules for Certain Admiralty and Maritime Claims because the M/V CANDACE ELISE is found within this Judicial District at the time of the filing of this Complaint.

4. At all material times, Ashton was the owner of the M/V CANDACE ELISE within the meaning of 46 U.S.C. § 30501.

5. At all material times, the M/V CANDACE ELISE was, and is, a towing vessel constructed in 1981 and having a length of approximately 100 feet.

6. At all material times, Ashton used due diligence to make the M/V CANDACE ELISE seaworthy, and it was, at the time of the incident described herein, tight, staunch, and strong and in all respects seaworthy and fit for the service in which it was engaged.

7. On December 13, 2022, the M/V CANDACE ELISE was on the Menominee River near Marinette, Wisconsin on a voyage originating from Marinette, Wisconsin on December 13, 2022, and terminating in Marinette, Wisconsin on December 16, 2022. The M/V CANDACE ELISE and its barge, the AM3600, were backing past a littoral combat ship (“LCS”) that was berthed directly aft of the M/V CANDACE ELISE. As the M/V CANDACE ELISE and barge AM3600 were backing towards Lake Michigan, barge AM3600 began to set south, toward the LCS. Barge AM3600 made contact with the LCS and proceeded, backing down the Menominee River, toward Lake Michigan. Barge AM3600 started setting south more as it passed the LCS and subsequently made contact with one or more of a set of five pier piles located at 1600 Ely Street in Marinette, Wisconsin. At all times relevant to this incident, Barge AM3600 was a passive instrument, fully controlled by the M/V CANDACE ELISE and its crew.

8. As a result of the aforementioned incident, the LCS and the five pier piles are alleged to have sustained damage. Ashton first received notice of a claim for alleged damage to the LCS and the five pier piles on December 19, 2022. So far as presently known to Plaintiff, the amount currently demanded arising from this claim is Two Million Sixty Five Thousand Four Hundred Forty Eight and 41/100 Dollars (\$2,065,448.41).

9. The aforementioned incident and any resulting damages occurred either as a result of factors for which Ashton is not responsible, or were caused by or were contributed to be caused by acts or omissions of which Plaintiff lacked any privity or knowledge.

10. The M/V CANDACE ELISE has not been attached or arrested in any suit brought in connection with a claim arising out of the aforementioned incident. Plaintiff has not, to its knowledge, been sued in any district as a result of said incident.

11. On December 16, 2022, the date of close of the voyage during which the incident which gave rise to this exoneration and limitation of liability action occurred, the value of the M/V CANDACE ELISE was One Million Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,225,000.00). *See* Affidavit of Casey M. Herschler attached hereto as Exhibit A. The M/V CANDACE ELISE was performing services at the time of said incident, with freight then pending with a value of Sixty Six Thousand Five Hundred and Two and 60/100 Dollars (\$66,502.60). *See* Affidavit of Philip Seth Andrie attached hereto as Exhibit B. Therefore, the entire value of the interest of Plaintiff in the M/V CANDACE ELISE and its freight pending at the time of the aforementioned incident did not exceed the total sum of One Million Two Hundred Ninety One Thousand Five Hundred and Two and 60/100 Dollars (\$1,291,502.60).

12. Security for the value of the M/V CANDACE ELISE and its freight then pending is submitted in the form of a Letter of Undertaking by the insurers for Ashton and the M/V CANDACE ELISE, Travelers Property Casualty Company of America and Endurance American Specialty Insurance Company, attached hereto as Exhibit C.

13. Plaintiff claims and seeks exoneration from or limitation of liability for any loss, damages, or injury occasioned or incurred by reason of the aforementioned incident, and for any and all claims relating thereto, and Plaintiff alleges that it has valid defenses thereto on the facts and on the law, and to that end, Plaintiff is ready and willing to proceed according to law and pursuant to the rules and practices of this Honorable Court.

14. All and singular, the premises are true and are exclusively within the Admiralty and Maritime Jurisdiction of the United States and this Honorable Court.

WHEREFORE, Plaintiff prays that:

- (a) This Honorable Court enter an Order approving the Stipulation for Costs in the amount of \$1,000.00;
- (b) This Honorable Court enter an Order approving the Security for Value in the amount of \$1,291,502.60;
- (c) Upon the filing of the foregoing, this Court issue an injunction restraining the commencement or prosecution of any and all actions, suits, or legal proceedings of any kind against Plaintiff, Plaintiff's agents or representatives, any person for whom Plaintiff is or may be responsible, Plaintiff's underwriters, the M/V CANDACE ELISE, and/or any other property owned by Plaintiff, arising from or relating to the incident recited in the above and foregoing Complaint other than in these proceedings;
- (d) The Court issue a notice to all persons, firms, and corporations having or alleging to have claims by reason of the incident recited in the above and foregoing Complaint, admonishing them to appear and file their claims with the Clerk of this Honorable Court on or before the date to be fixed by this Court and as specified in the notice or to be forever barred and permanently enjoined from making and filing any such claims; and to answer, all and singular, the allegations of this Complaint;
- (e) The Court adjudge Plaintiff not liable for any damages, demands, or claims whatsoever in consequence of or arising out of or connected with the incident recited above and in this Complaint; or limit its liability, if any, to the value of the M/V CANDACE ELISE and its freight then pending.
- (f) The Court grant Plaintiff such other and further relief as may be just and proper.

Respectfully submitted,

FOX SMITH, LLC

By: /s/ Stanislav Levchinsky
Stanislav Levchinsky, #63030MO
FOX SMITH, LLC
One South Memorial Drive, 12th Floor
St. Louis, MO 63102
314-588-7000
314-588-1965 (Fax)
slevchinsky@foxsmithlaw.com

Attorneys for Plaintiff Ashton Marine Corporation.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 16th day of June, 2023, the foregoing was filed electronically with the Clerk of Court using the CM/ECF system.

/s/ Stanislav Levchinsky